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In the Supreme Court of the United States

OCTOBER TERM, 1971

HARRY R. BOOTH,

Petitioner,

vs.

LEMONT MFG. CORP., CECO STEEL PRODUCTS CORP., PUBLICKER CHEMICAL CORPORATION, AMERICAN OIL CO., UNION TANK CAR CO., CORN PRODUCTS CO., METROPOLITAN SANITARY DISTRICT OF GREATER CHICAGO,

Respondents.

SUPPLEMENTAL BRIEF UNDER RULE 24-5

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PETITIONER'S SUPPLEMENTAL BRIEF UNDER RULE 24-5

To the Honorable, The Chief Justice of the United States, and the Associate Justices of the Supreme Court of the United States:

Petitioner Submits an Additional Claim Relating to the Disqualification of Judge Otto Kerner

1. Petitioner incorporates herein and makes a part hereof his Emergency Motion To File A Supplementary Brief Under Rule 24-5 Relating To New Matters Affecting The

Disqualification of Judge Otto Kerner And For Other Relief forwarded to this Court on October 8, 1971.

2. The Motion and exhibits set forth are an adequate legal and factual basis for the disqualification of Judge Otto Kerner in the hearing and decision of this case before the Court of Appeals.

3. We consider it unnecessary to reproduce the additional many other press accounts in the Chicago and national press since July 29, 1971 commenting upon the transactions under which Judge Otto Kerner, his former law partner and close associate, Theodore Isaacs, other judges, members of the Illinois Legislature and other persons holding significant state and public office made enormous profits arising out of secret transactions with one or more firms engaged in the business of conducting horse racing in Illinois. Their existence condemns the transactions and public officials as grossly unfaithful to the people of Illinois and all those imposing any public responsibilities upon them.

4. Respondents have failed to question Petitioner's reliance upon such facts or the legal interpretation set forth in such Motion.

5. Petitioner recognizes the difficult problem of presenting all material facts bearing upon "Circumstances and relationships must be considered for the disqualifying inteerst cannot be defined with precision." (*In re Murchison*, 349 U.S. 133, 136). The underlying records upon which the Motion was predicated are in the possession of Judge Kerner or agencies of the federal government, the Department of Justice and Internal Revenue Service and are not available to Petitioner.

6. Petitioner's challenge to Judge Kerner's participation is also warranted by the consistent unwillingness of

the Respondents to accord Petitioner's class procedural due process. This is illustrated by their insistence upon a state court hearing before a Chancellor whose son was a partner in the Kerkland firm (Counsel for American Oil Co.) and their persistent demand that such judgment bars this suit as res judicata.

7. The essence of the recently published material discloses Judge Otto Kerner while Governor of Illinois, joined a substantial group of Illinois public officials who used their public positions to make large profits in firms whose operations were subject to active control by the State of Illinois through state governmental agencies and the Illinois legislature.

8. Governor Kerner did not act in a nominal capacity in this situation. Moreover, he must have been aware of the fact that he was not alone in participating in these large secret insider profits. He failed to protect the public interest.

Thus it appears he apparently violated the high public trust and responsibilities imposed upon him. The loss of public confidence in his willingness to serve only the public interest disqualifies him of his right to sit in cases such as this where the public stakes are of vast importance.

9. It is not necessary that Petitioner establish that Governor Kerner engaged in one or more similar transactions or invested in the stock of one or more District lessees. Petitioner requested access to the list of his investments and his inquiry of October 1 to the Clerk of the Circuit Court of the Court of Appeals remains unanswered.

10. We believe we have fully demonstrated that Judge Kerner's participation and opinion is heavily clouded with

the absence of both the probability and the absence of the appearance of due process.

11. These grounds, however, are independent of the several constitutional and jurisdictional principles Petitioner has established for granting of this Writ and reversal of the judgment below.

Respectfully submitted,

HARRY R. BOOTH
Petitioner pro se